

November 10, 2010

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte Notice**  
**WT Docket No. 05-265**

Dear Ms. Dortch:

On November 9, 2010, Thomas Sugrue, Kathleen Ham, Dave Miller, and Luisa Lancetti of T-Mobile USA, Inc. ("T-Mobile") and the undersigned met with Austin Schlick, David Horowitz, and Andrea Kearney, of the Office of General Counsel, and Paul Murray and Peter Trachtenberg of the Wireless Telecommunications Bureau regarding the above-captioned proceeding.

In the meeting, we reiterated the arguments from our prior filings in this proceeding regarding the consumer and competitive benefits that would accrue from adopting a data roaming rule. We noted that the record in this proceeding is now complete and that the Commission should move forward expeditiously to adopt the rule, consistent with the recommendation in the National Broadband Plan.

In support of our argument that the increasing consolidation in the wireless marketplace warrants adoption of a roaming rule, we pointed to AT&T's recent acknowledgement that it "does not have a current desire" to seek 3G roaming from T-Mobile.<sup>1/</sup> We noted that while

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<sup>1/</sup> See Email from Gram Meadors, AT&T, to Dirk Mosa, T-Mobile, attached to Letter from Jeanine Poltronieri, Assistant Vice President, External Affairs, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 3, 2010). While Mr. Meadors attributes this current lack of desire to the fact that T-Mobile's 3G network does not utilize the same spectrum as AT&T's 3G handsets, handsets can readily be – and increasingly are – equipped with chipsets that enable the use of multiple 3G bands. See Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 9, 2010). If AT&T did not have a national footprint made possible by its series of acquisitions, it presumably would have the incentive to equip its phones with such chipsets to obtain roaming in areas where it lacked its own network.

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roaming has historically been competitive and reciprocal, *i.e.*, there were multiple potential roaming partners and a mutual need for roaming. AT&T's letter suggests that roaming is increasingly becoming a monopoly service provided on a unilateral basis.

We also discussed the impact of a data roaming rule on the goals of encouraging investment and jobs. Contrary to arguments made by opponents of such a rule, we explained that such a rule would promote these goals. By ensuring the availability of data roaming on just, reasonable, and non-discriminatory terms, a roaming rule will enable T-Mobile to invest in new facilities in smaller markets that would not be economical to build out unless T-Mobile could use roaming to serve the adjacent more sparsely populated areas. The availability of data roaming will also promote additional investment in T-Mobile's existing footprint, to meet the increased demands of a larger subscriber base that it could attract by virtue of being able to provide service in areas where it has not yet built out. In both of these instances, the increased investment will create jobs related to the construction and operation of the new facilities. As new customers come online, moreover, still more jobs will be created. For example, T-Mobile has found that the ability to roam has enabled the company to locate call centers in more remote locations and build a facilities-based footprint over time as its customer base grows. The enhanced productivity that wireless users will realize from the competitive choice from among multiple providers of mobile high speed broadband will also benefit the economy.

We also pointed out that, by improving the coverage of a requesting carrier, a data roaming rule would help the requesting carrier reduce subscriber churn and improve revenues, which could be used for increased investments and job creation. Finally, we noted that opponents of data roaming had also opposed similar rules – including the cellular headstart doctrine and the voice roaming rule – on similar grounds, but the evidence is clear that these rules have had no adverse effect on investments in wireless networks.

Finally, we reiterated our strong support for the FCC's legal authority to adopt a data roaming rule. We argued that the non-discrimination standard applicable to data roaming requests should be identical to the standard that the Commission adopted for voice roaming, to avoid regulatory arbitrage and the uncertainty that would inevitably accompany the adoption of a different standard. We also explained that it was unnecessary to adopt a different standard in order to avoid the statutory prohibition on common carrier regulation of a private land mobile service because, contrary to AT&T's and Verizon's arguments, data roaming is not a private land mobile service. Rather, as we have explained previously, data roaming is the functional equivalent of commercial mobile radio service ("CMRS") because it is increasingly becoming a substitute for voice roaming both for customers and carriers. We also noted that the extension of the voice roaming rule to data roaming under the FCC's ancillary authority does not amount to the comprehensive common carrier regulation proscribed by the statute, and that the regulation of a functional equivalent as a common carrier service is not compelled by the statute where, as in the case of data roaming, common carrier treatment is not necessary to prevent the unfair

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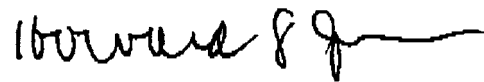
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advantages of disparate regulation that the Commission sought to preclude when it adopted its rule specifying that functionally equivalent services would be “regulated as [CMRS].”<sup>2/</sup>

Pursuant to section 1.1206(b) of the Commission’s rules, an electronic copy of this letter is being filed electronically with the Office of the Secretary for inclusion in the above-referenced docket and served electronically on the Commission participants in the meeting.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

cc: Austin Schlick  
David Horowitz  
Andrea Kearney  
Paul Murray  
Peter Trachtenberg

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<sup>2/</sup> See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1447 ¶ 78 (1994).